IN THE HIGH COURT OF UTTARANCHAL AT NAINITAL.

Court No.3

Criminal Revision No. 74/ 2001
(Old No. 1916/1987)

Kheema Nand…… …… Revisionist.

Vs.

State of U.P. & another …… Respondent.

Hon'ble Irshad Hussain, J.

None appears for the revisionist. Heard Sri G.S.Sandhu learned A.G.A. and perused the record of the criminal revision.

2- This criminal revision was filed against the order dated 28-10-1987 passed by the then Additional Sessions Judge, Nainital in criminal revision No. 85 of 1986 filed by respondent No.2 against the order of the learned Magistrate dated 26-5-1987 summoning him under section 319 of the Code of Criminal Procedure (for short 'Code') in criminal case No. 643 of 1987 under sections 494, 498-A. I.P.C.

3- The application of the prosecution under section 319 of the 'Code' was preferred in view of the fact that P.W.2, Khyali Dutt gave out that the present revisionist Kheema Nand was also involved in the commission of the crime in question. The learned Magistrate was satisfied that there were sufficient grounds to proceed against this person therefore passed the order on 26-5-1986 so that the said person may be put to trial along-with other accused.

4- A revision was preferred against the said order by the person sought to be proceeded with along-with other accused. The learned Sessions Judge analyzed the evidence which was recorded under section 244 of the 'Code' and found that the complaint was barred by the provisions of section 198 of the 'Code' in view of the fact that the complaint was not filed by the person competent to prosecute the wrong doer for an offence punishable under section 497 or 498 of the I.P.C. Smt. Leela Devi was the legally wedded wife on whose instance only the cognizance could have been taken against the alleged accused who was alleged to have entered into the wedlock second time with the help of other accused including the person who was summoned under section 319 of the 'Code'. Considering this there was legal bar in taking

cognizance and to proceed against the petitioner and therefore the learned Sessions Judge allowed the revision and set aside the order of the learned Magistrate passed on 26-5-1987.

5- Having gone through the impugned judgment no infirmity was noticed in the appreciation of the legal provision as contained in section 198 of the 'Code' and therefore there was justification in setting aside the order of the learned Magistrate passed under section 319 of the 'Code'.

6- There being no merit in this revision the same is hereby dismissed. The stay order dated 17.12.1987 is vacated.

(Irshad Hussain, J.)

Dated 21-10-2003

ISB